

IN THE UNITED STATES DISTRICT COURT IN AND FOR  
EASTERN DISTRICT OF OKLAHOMA

1. JAMES NOBLITT )  
2. KRISTIE NOBLITT )  
d/b/a COURTYARD BISTRO, )  
Plaintiffs, )  
v )  
ENDURANCE AMERICAN SPECIALTY )  
INSURANCE COMPANY, a New York for ) Case No. CIV-2015- 171-JHP  
profit insurance corporation, )  
Defendant. )

COMPLAINT

A. Parties

1. James Noblitt and Kristie Noblitt, husband and wife, are citizens of the State of Oklahoma.
2. James Noblitt and Kristie Noblitt are the owners-operators of a business known as Courtyard Bistro, doing business solely within the State of Oklahoma.
3. The Defendant, Endurance American Specialty Insurance Company, is a foreign for profit insurance corporation organized and incorporated under the laws of the State of New York.
4. The principal place of business for Defendant, Endurance American Specialty Insurance Company, is New York, New York.
5. The Defendant, Endurance American Specialty Insurance Company, is licensed to conduct business in the State of Oklahoma and may be served with process through the Oklahoma Department of Insurance.
6. This action is not related to any other case filed in this Court.

**B. Jurisdiction**

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is diversity between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

**C. Facts**

8. At all times material hereto, the Plaintiffs, James and Kristie Noblitt, owned commercial property located at 1507 S. Lee St., in Fort Gibson, Oklahoma, known as Courtyard Bistro.

9. On or about May 7, 2014, Plaintiffs' real and personal business property was damaged and/or destroyed as a result of a fire determined to be arson. Said damage and/or loss to the real and personal property of Plaintiffs is covered under the terms and conditions of Plaintiffs' commercial property insurance policy issued by the Defendant.

10. At all times material hereto, the Plaintiffs, James and Kristie Noblitt, doing business as Courtyard Bistro, were insured under the terms and conditions of a commercial property insurance policy, policy number CBP10000453000, issued by the Defendant, Endurance American Specialty Insurance Company.

11. At all times material hereto, the Plaintiffs, James and Kristie Noblitt, doing business as Courtyard Bistro, complied with the terms and conditions of the said commercial property insurance policy.

12. Damage and/or loss resulting from fire is a covered peril not otherwise excluded by the terms and conditions of the policy issued by the Defendant.

**D. Count I Breach of Contract**

13. Plaintiffs, James and Kristie Noblitt, assert, allege, and incorporate 1-12 herein.

14. The commercial property insurance policy number 10000453000, issued by Defendant, Endurance Specialty Insurance Company, was in effect on May 7, 2014.

15. The acts and omissions by Defendant, Endurance American Specialty Insurance Company, in the investigation, evaluation, and failure to timely process Plaintiffs' claim were unreasonable and constitute a breach of contract for which contractual damages are hereby sought. Defendant breached its contract with Plaintiffs by failing to conduct a reasonable and timely investigation and failing to timely process Plaintiffs' claim.

16. The Defendant's acts and omissions, including the failure to timely process Plaintiffs' claim, resulted in the loss through a foreclosure action of Plaintiffs' real and personal property associated with the business, Courtyard Bistro, covered under the terms and conditions of the commercial property insurance policy issued by Defendant to Plaintiffs and which was damaged and/or destroyed in the May 7, 2014 fire.

17. The Defendant's failure to timely process Plaintiffs' claim for the damage to covered property is unreasonable and amounts to a breach of the insurance contract because the damages are a result of the May 7, 2014 fire, which is explicitly covered by the terms and conditions of the policy issued by Defendant. Further, Defendant's failure to adequately and timely investigate Plaintiffs' claim amounts to a material breach of the insurance contract as it resulted in the withholding of payment for damaged and/or destroyed items of real and personal property which are covered under the terms and conditions of Plaintiffs' insurance policy.

**E. Count II Bad Faith**

18. Plaintiffs, James and Kristie Noblitt, assert, allege, and incorporate 1-17 herein.

19. The acts and omissions by Defendant, Endurance American Specialty Insurance Company, in the investigation, evaluation, and failure to timely process Plaintiffs' claim were unreasonable and constitute bad faith for which bad faith and extra-contractual damages are hereby sought.

20. Defendant acted unreasonably and in bad faith by failing to adequately and timely investigate Plaintiffs' claim.

21. Defendant and/or its authorized agent was hostile toward Plaintiffs and failed to work with Plaintiffs in the investigation and adjustment of their property damage and/or destruction claim which resulted in a wrongful denial of benefits for covered property.

22. Plaintiffs cooperated fully with the investigation and Defendant unreasonably and without cause delayed the processing of Plaintiffs' claim.

23. By June, 2014, Defendant had interviewed the Fire Marshall, law enforcement officers and investigators, and interviewed Plaintiffs.

24. Thereafter, on or about August 12, 2014, Defendant began requesting an Examination Under Oath, that was not conducted until September 11, 2014, and requested the production of business related documents, banking records, and tax records that were produced by Plaintiffs.

25. There was no additional or different information than that obtained in June, 2014, by Defendant regarding the facts and circumstances of the fire that Plaintiffs immediately reported to law enforcement, the fire department and Defendant as a robbery and arson.

26. Plaintiffs had also obtained estimates for repairs and cleaning and provided the same to Defendant by June 28, 2014.

27. Defendant failed to timely and reasonably process Plaintiffs' claim.

28. As a result of Defendant's wrongful conduct, Plaintiffs' were unable to make timely and necessary repairs to re-open their business causing them to suffer economic loss, loss of revenue and income, undue financial hardship, mental anguish, and subsequent foreclosure action being initiated and finalized against Plaintiffs.

**F. Count III Punitive Damages**

29. Plaintiffs, James and Kristie Noblitt, assert, allege, and incorporate 1-28 herein.

30. The unreasonable conduct of Defendant, Endurance American Specialty Insurance Company, in the handling of Plaintiffs' claim was intentional, willful, wanton and was committed in reckless disregard for the rights of Plaintiffs for which punitive damages are hereby sought.

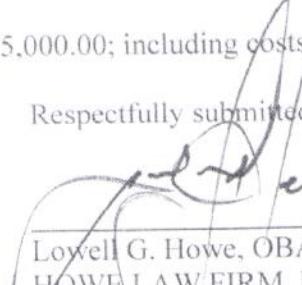
**G. Demand for Jury Trial**

31. Plaintiffs, James and Kristie Noblitt, hereby request that the matters set forth herein be determined by a jury of their peers.

**H. Prayer**

32. Having properly pled, Plaintiffs, James and Kristie Noblitt, hereby seek contractual, bad faith and punitive damages against Defendant, Endurance American Specialty Insurance Company, all in an amount in excess of \$75,000.00; including costs, interest, and attorney fees.

Respectfully submitted,

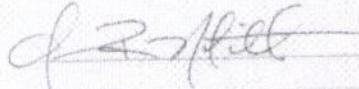


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Attorney for Plaintiffs

VERIFICATION

State of Oklahoma, County of Muskogee, is:

James Noblitt, of lawful age and being first duly sworn upon oath, states: I am James Noblitt, Plaintiff above named. I have read the foregoing instrument and state that all statements contained therein are true and correct according to my best information and belief

  
\_\_\_\_\_  
Plaintiff

Subscribed and sworn to before me on May 6, 2015, by James Noblitt  
Plaintiff above named.

My Commission Expires:

9/10/2016

Comm. # 04008258



Paula J. Burright  
Notary Public

VERIFICATION

State of Oklahoma, County of Muskogee, ss.

Kristie Noblitt, of lawful age and being first duly sworn upon oath, states: I am Kristie Noblitt, Plaintiff above named. I have read the foregoing instrument and state that all statements contained therein are true and correct according to my best information and belief

Kristie Noblitt  
Plaintiff

Subscribed and sworn to before me on May 7<sup>th</sup>, 2015, by Kristie Noblitt  
Plaintiff above named

My Commission Expires

11/24/18  
Comm. # 10004950



Joy L. Davis